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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,510	02/16/2004	Mary Ann Hettich	038316/269234	1384

826 7590 05/10/2006

ALSTON & BIRD LLP  
BANK OF AMERICA PLAZA  
101 SOUTH TRYON STREET, SUITE 4000  
CHARLOTTE, NC 28280-4000

EXAMINER
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HOEY, ALISSA L

ART UNIT	PAPER NUMBER
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3765

DATE MAILED: 05/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/780,510	<b>Applicant(s)</b> HETTICH, MARY ANN	
	<b>Examiner</b> Alissa L. Hoey	<b>Art Unit</b> 3765	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 March 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Response to Amendment***

1. This is in response to remarks and arguments received on 03/03/06. Claims 1-7 are finally rejected below.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Russell (US 3,440,665) in view of Fregeolle (US 3,975,929).

In regard to claim 1, Russell teaches a stocking garment (4) comprising a foot portion (11, 15), leg portion (12, 11) having a lower leg portion and an upper leg portion and a waist support (18) spaced above the leg portions (11, 12). A hip portion (17) extending between the leg portion and the waist support portion. The hip portion (17) having a cutout portion (21, 22) on each side of the hip portion sized to accommodate the lower waist of the wearer so that the stocking may be worn on either leg (figure 1). The waist portion (18) constructed so as to accommodate a fastener (27, 28) surrounding the patient's waist and the stocking being capable of being worn on either leg of the patient (figures 1 and 2).

However, Russell fails to teach the stocking being a therapeutic gradient compression stocking.

Fregeolle teaches a therapeutic gradient compression stocking (column 1, lines 4-9).

In regard to claim 2, Russell teaches the waist portion (18) including strap engaging loop having a waist strap passing there through (figures 2 and 6).

In regard to claim 3, Russell teaches the waist strap fastening on either the left side of the right side of the strap (figures 2, identifiers 26, 27, 28, 29).

In regard to claim 4, it would have been obvious to have provided the foot portion having a closed toe configuration or a toe opening configuration, because as long as the stocking supports the user's leg and has a connecting waist portion allowing the stocking to be worn on either foot the toe configuration can be chosen by one having ordinary skill in the art based upon end use of the garment.

In regard to claim 5, Russell teaches the foot portion having a closed toe (11, 15).

In regard to claim 6, Russell fails to teach the pressure in the distal end of the stocking gradually decreases to the proximal end.

Fregeolle teaches the pressure in the distal end of the stocking gradually decreases to the proximal end of the stocking (column 1, lines 4-9).

In regard to claim 7, Russell teaches the hip portion (17) extending from about 30% to 50% of the circumference of the upper opening of the stocking exclusive of the cutouts (figures 1 and 2).

It would have been obvious to have provided the stocking of Russell having the waist connection with the therapeutic compression construction of the stocking of

Art Unit: 3765

Fregeolle, since the stocking of Russell provided with the therapeutic compression construction would provide not only a stocking garment that secures at the waist to prevent the garment from falling down when worn but also provides therapeutic needs to the wearer preventing incidence of pulmonary embolism.

***Response to Arguments***

4. Applicant's arguments filed 03/03/06 have been fully considered but they are not persuasive.

I) Applicant argues that Russell (US 3,440,665) fails to teach the hip portion having a cutout portion on each side of the hip portion sized to accommodate the lower waist of the wearer so that the stocking may be worn on either leg.

Examiner notes that the stocking article of Russell is capable of being worn on either leg of the wearer. Nothing prevents the user from wearing either leg portion of the garment on either leg. The open area in the hip portion allows the legs to be reversed and still attachable together to be worn on a user.

II) Applicant argues that Russell fails to teach the strap engaging loop having a waist strap passing there through.

Examiner notes that Russell teaches a strap engaging loop (33, 28) having a waist strap (32, 41, 30) passing there through. As claimed Russell reads on the limitations of claim 2.

III) Applicant argues that Russell fails to teach the waist strap fastens on either the left or the right side of the strap.

Examiner disagrees since Russell teaches the waist strap sections (30, 30) having loop and hook fasteners on both the left and right leg portions along the front and the back so that the left and right leg portions have leg straps with both hook and loop fasteners.

IV) Applicant argues that it would not have been obvious to have provide the foot portion having an open or closed toe configuration.

Examiner notes that in Applicant's specification in paragraph 011, it states that the foot portion may be open or may be closed. Therefore as long as the foot portion is open or closed it reads on the invention as disclosed.

V) Applicant argues that Russell fails to teach the hip portion extending from about 30% to 50% of the circumference of the upper opening exclusive of the cutouts.

Examiner notes that Russell teaches the hip portion extending from greater than 30-50% of the circumference of the upper opening see the material below the elastic band in figures 1, 2, and 5. As long as the hip portions covers 30-50% of the circumference it reads on the limitation as claimed.

### ***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

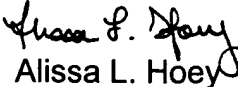
Art Unit: 3765

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (571) 272-4985. The examiner can normally be reached on M-F (8:00-5:30) Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (571) 272-4983. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Alissa L. Hoey  
Primary Examiner  
Technology Center 3700